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Attorneys for Defendant  
HOME DEPOT U.S.A., INC. (erroneously sued as THE HOME DEPOT U.S.A., INC.)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KENNETH PRESBA and KRIS  
PRESBA,

Plaintiff,

vs.

THE HOME DEPOT U.S.A., INC.;  
and DOES 1 to 25,

Defendants.

Case No.

**NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. §§ 1441 AND 1446(b)  
BASED ON DIVERSITY OF  
CITIZENSHIP UNDER 28 U.S.C. § 1332**

**JURY TRIAL DEMANDED**

**TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

PLEASE TAKE NOTICE that Defendant HOME DEPOT U.S.A., INC.  
(hereinafter "HOME DEPOT"), by and through its counsel, hereby remove the above-  
captioned action from the Superior Court of the State of California, in and for the County  
of El Dorado, to the United States District Court, Eastern District of California, for the  
reasons described below:

1. HOME DEPOT is a named Defendant in a civil action pending against it in  
the El Dorado County Superior Court, entitled *Kenneth Presba and Kris Presba vs. The  
Home Depot U.S.A., Inc.*, Case No. 22CV0687.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Complaint.  
HOME DEPOT U.S.A., INC. timely filed an Answer to the Complaint (See **Exhibit B**),  
but the Court has not yet returned a conformed copy.

///

3. Venue is proper in this Court because the boundaries of the United States District Court for the Eastern District of California, pursuant to 28 U.S.C. § 84(b) include El Dorado County.

4. Following the filing of this Notice of Removal of Action, written notice of this filing will be served on counsel for Plaintiff and will be filed with the Clerk of the Superior Court of California for the County of El Dorado, in accordance with 28 U.S.C. § 1446(d).

## JURISDICTION

5. This is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332. This case may be removed to this Court by HOME DEPOT pursuant to the provisions of 28 U.S.C. §§ 1441(b) and 1446 in that it is a case that could have been commenced in federal court based on diversity of citizenship.

6. Diversity jurisdiction applies for the following reasons:

a. At all times relevant to removal jurisdiction, Plaintiffs are and were residents of the State of California.

b. Both at the time that this action was commenced and at this time, HOME DEPOT was incorporated in Delaware and has its principal place of business in Georgia. HOME DEPOT's corporate offices are located in Atlanta, Georgia, where its finance, accounting, purchasing, treasury, marketing, training, human resources, information systems, internal audit, and legal departments are located, making policy decisions that affect the entire company. "[P]rincipal place of business' refers to the place where a corporation's officers direct, control, and coordinate the corporation's activities... i.e., the 'nerve center.'" (*Hertz Corp. v. Friend*, 130 S.Ct. 1181, 1184 (U.S., 2010).) "For purposes of removal... the citizenship of defendants sued under fictitious names shall be disregarded." (28 U.S.C. §1441(a).)

c. Removal becomes viable when the defendant is able to intelligently ascertain that a claim exceeds \$75,000. (*Huffman v. Saul Holdings Ltd. Partnership* (1999) 194 F.3d 1072, 1078.) Here, notwithstanding that all damages and liability are

1 disputed, Defendant was served with a Statement of Damages reflecting \$250,000 in  
2 damages are alleged and in controversy. (See **Exhibit C.**) Accordingly, it is reasonably  
3 ascertainable that the amount in controversy in this case exceeds the \$75,000 threshold  
4 specified in 28 U.S.C. § 1332(a).

5 7. Based on the foregoing, the matter is removable pursuant to 28 U.S.C.  
6 §§ 1332 and 1446(b).

7 WHEREFORE, the undersigned requests that the action described above be  
8 removed in its entirety to this Court for all further proceedings pursuant to 28 U.S.C.  
9 § 1441, et seq.

10 **DEMAND FOR JURY TRIAL**

11 Defendant demands a jury trial of 12 jurors pursuant to Federal Rules of Court,  
12 Rule 48.

13 DATED: July 14, 2022

GOODMAN NEUMAN HAMILTON LLP

14  
15 By: 

16 JOSHUA S. GOODMAN  
17 ZACHARY S. TOLSON  
18 Attorneys for Defendant  
HOME DEPOT U.S.A., INC.  
(erroneously sued as THE HOME  
DEPOT U.S.A., INC.)

# **EXHIBIT A**

MAY

MAY 31 2022

SUM-100

**SUMMONS  
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

The Home Depot U.S.A., Inc., and Does 1 to 25

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Kenneth Presba and Kris Presba

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

EL DORADO CO. SUPERIOR CT.

FILED APR 22 2022

BY S. J. Sullivan  
Deputy**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): El Dorado County Superior Court  
3321 Cameron Park Drive  
Cameron Park, CA 95682

CASE NUMBER:  
(Número del Caso):

22CV0687

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

William A. Deitchman, Esq., 6201 Enterprise Drive, Suite E, Diamond Springs, CA 95619. (530) 626-3050

DATE:

(Fecha)

4. 22. 2022

Clerk, by

(Secretario)

S. J. Sullivan

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

ISSUED

**NOTICE TO THE PERSON SERVED: You are served**1. ☐ as an individual defendant.2. ☐ as the person sued under the fictitious name of (specify):3. ☒ on behalf of (specify):

The Home Depot U.S.A., Inc.

under: ☒

CCP 416.10 (corporation)

☐

CCP 416.20 (defunct corporation)

☐

CCP 416.40 (association or partnership)

☐

other (specify):

4. ☒ by personal delivery on (date):

6/14/22

Assigned to  
Judge Dylan Sullivan

For all purposes

☐

CCP 416.60 (minor)

☐

CCP 416.70 (conservatee)

☐

CCP 416.90 (authorized person)

PLD-PI-001

|  |   |
|--|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):<br>William A. Deitchman, Esq. (SBN 249267)<br>DEITCHMAN & DEITCHMAN<br>6201 Enterprise Drive, Suite E<br>Diamond Springs, CA 95619<br>TELEPHONE NO: (530) 626-3050 FAX NO. (Optional): (530) 626-3060<br>E-MAIL ADDRESS (Optional): will@deitchmanlaw.com<br>ATTORNEY FOR (Name): Plaintiffs, Kenneth Presba and Kris Presba   | FOR COURT USE ONLY<br><br>EL DORADO CO. SUPERIOR CT.    |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF El Dorado<br>STREET ADDRESS: 3321 Cameron Park Drive<br>MAILING ADDRESS:<br>CITY AND ZIP CODE: Cameron Park, CA 95682<br>BRANCH NAME:  | FILED APR 22 2022<br>BY <u>[Signature]</u> Deputy       |
| PLAINTIFF: Kenneth Presba and Kris Presba<br><br>DEFENDANT: The Home Depot U.S.A., Inc., and<br><br><input checked="" type="checkbox"/> DOES 1 TO 25   | Assigned to<br>Judge Dylan Sullivan<br>For all purposes |
| COMPLAINT—Personal Injury, Property Damage, Wrongful Death<br><input type="checkbox"/> AMENDED (Number):<br>Type (check all that apply):<br><input type="checkbox"/> MOTOR VEHICLE <input checked="" type="checkbox"/> OTHER (specify): Premise Liability<br><input type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death<br><input checked="" type="checkbox"/> Personal Injury <input checked="" type="checkbox"/> Other Damages (specify): See attachments  | CASE NUMBER:  |
| Jurisdiction (check all that apply):<br><input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE<br>Amount demanded <input type="checkbox"/> does not exceed \$10,000<br><input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000<br><input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)<br><input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint<br><input type="checkbox"/> from limited to unlimited<br><input type="checkbox"/> from unlimited to limited | 22CV0687  |

1. Plaintiff (name or names): Kenneth Presba and Kris Presba  
 alleges causes of action against defendant (name or names):  
 The Home Depot U.S.A., Inc., and Does 1 to 25.
2. This pleading, including attachments and exhibits, consists of the following number of pages: Five.
3. Each plaintiff named above is a competent adult
  - a. ☐ except plaintiff (name):
    - (1) ☐ a corporation qualified to do business in California
    - (2) ☐ an unincorporated entity (describe):
    - (3) ☐ a public entity (describe):
    - (4) ☐ a minor ☐ an adult
      - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
      - (b) ☐ other (specify):
    - (5) ☐ other (specify):
  - b. ☐ except plaintiff (name):
    - (1) ☐ a corporation qualified to do business in California
    - (2) ☐ an unincorporated entity (describe):
    - (3) ☐ a public entity (describe):
    - (4) ☐ a minor ☐ an adult
      - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
      - (b) ☐ other (specify):
    - (5) ☐ other (specify):

☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

PLD-PI-001

|   |              |
|---|--------------|
| SHORT TITLE:<br>Presba v. The Home Depot U.S.A., Inc., et al. | CASE NUMBER: |
|---|--------------|

4. ☐ Plaintiff (name):  
is doing business under the fictitious name (specify):  
  
and has complied with the fictitious business name laws.
5. Each defendant named above is a natural person
- a. ☒ except defendant (name): The Home Depot USA c. ☐ except defendant (name):
- (1) ☒ a business organization, form unknown (1) ☐ a business organization, form unknown  
(2) ☐ a corporation (2) ☐ a corporation  
(3) ☐ an unincorporated entity (describe): (3) ☐ an unincorporated entity (describe):  
(4) ☐ a public entity (describe): (4) ☐ a public entity (describe):  
(5) ☐ other (specify): (5) ☐ other (specify):
- b. ☐ except defendant (name): d. ☐ except defendant (name):
- (1) ☐ a business organization, form unknown (1) ☐ a business organization, form unknown  
(2) ☐ a corporation (2) ☐ a corporation  
(3) ☐ an unincorporated entity (describe): (3) ☐ an unincorporated entity (describe):  
(4) ☐ a public entity (describe): (4) ☐ a public entity (describe):  
(5) ☐ other (specify): (5) ☐ other (specify):
- ☐ Information about additional defendants who are not natural persons is contained in Attachment 5.
6. The true names of defendants sued as Does are unknown to plaintiff.
- a. ☒ Doe defendants (specify Doe numbers): 1 to 25 were the agents or employees of other named defendants and acted within the scope of that agency or employment.  
b. ☒ Doe defendants (specify Doe numbers): 1 to 25 are persons whose capacities are unknown to plaintiff.
7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):
8. This court is the proper court because
- a. ☒ at least one defendant now resides in its jurisdictional area.  
b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.  
c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.  
d. ☐ other (specify):
9. ☐ Plaintiff is required to comply with a claims statute, and
- a. ☐ has complied with applicable claims statutes, or  
b. ☐ is excused from complying because (specify):

PLD-PI-001

SHORT TITLE:

Presba v. The Home Depot U.S.A., Inc., et al.

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (*each complaint must have one or more causes of action attached*):

- a. ☐ Motor Vehicle
- b. ☐ General Negligence
- c. ☐ Intentional Tort
- d. ☐ Products Liability
- e. ☒ Premises Liability
- f. ☒ Other (*specify*):

Negligent infliction of emotional distress. Loss of consortium.

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☒ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☒ property damage
- f. ☒ loss of earning capacity
- g. ☒ other damage (*specify*):

Any and all economic and non-economic damages as may be proved and for such relief as the court deems just and proper.

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
- b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

The amount of damages is (*in cases for personal injury or wrongful death, you must check (1)*):

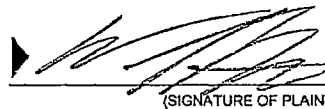
- (1) ☒ according to proof
- (2) ☐ in the amount of: \$

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (*specify paragraph numbers*):

Date: April 20, 2022

William A. Deitchman, Esq.

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY)



PLD-PI-001(4)

SHORT TITLE:  
Presba v. The Home Depot U.S.A., Inc.

CASE NUMBER:  
22CV0687

First

**CAUSE OF ACTION—Premises Liability**

Page 4

(number)

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

Prem.L-1. Plaintiff (name): Kenneth Presba

alleges the acts of defendants were the legal (proximate) cause of damages to plaintiff.

On (date): November 21, 2020

plaintiff was injured on the following premises in the following

fashion (description of premises and circumstances of injury):

Plaintiff was a customer shopping for Christmas trees at defendants' store located at 600 Placerville Drive, Placerville, CA 95667. Defendants' employee indicated to plaintiff where the trees were located. Plaintiff walked down the aisle and his right foot caught on power cords that were strewn across the floor, causing him to fall and suffer injuries. The open aisle and power cords were a dangerous condition which created an unreasonable and foreseeable risk of harm to the public. Defendants had actual or constructive notice of the dangerous condition. Defendants negligently failed to make reasonable inspection to remedy the condition or give adequate warning.

Prem.L-2. ☒ **Count One—Negligence** The defendants who negligently owned, maintained, managed and operated the described premises were (names):  
The Home Depot U.S.A., Inc. and

☒ Does 1 to 25

Prem.L-3. ☐ **Count Two—Willful Failure to Warn** [Civil Code section 846] The defendant owners who willfully or maliciously failed to guard or warn against a dangerous condition, use, structure, or activity were (names):

☐ Does to

Plaintiff, a recreational user, was ☐ an invited guest ☐ a paying guest.

Prem.L-4. ☐ **Count Three—Dangerous Condition of Public Property** The defendants who owned public property on which a dangerous condition existed were (names):

☐ Does to

- a. ☐ The defendant public entity had ☐ actual ☐ constructive notice of the existence of the dangerous condition in sufficient time prior to the injury to have corrected it.
- b. ☐ The condition was created by employees of the defendant public entity.

Prem.L-5.a. ☒ **Allegations about Other Defendants** The defendants who were the agents and employees of the other defendants and acted within the scope of the agency were (names):  
The Home Depot U.S.A., Inc. and

☒ Does 1 to 25

- b. ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for their liability are:  
☐ described in attachment Prem.L-5.b ☐ as follows (names):

Assigned to  
Judge Dylan Sullivan  
For all purposes

EL DORADO CO. SUPERIOR CT.  
FILED APR 22 2022  
BY [Signature] Deputy

Page 1 of 1

MC-025

|   |                                 |
|---|---------------------------------|
| SHORT TITLE:<br>Presba v. The Home Depot U.S.A., Inc. | CASE NUMBER:<br><b>22CV0687</b> |
|---|---------------------------------|

ATTACHMENT (Number): 2

(This Attachment may be used with any Judicial Council form.)

## SECOND CAUSE OF ACTION - Negligent Infliction of Emotional Distress

Plaintiff, Kris Presba alleges that All Named Defendants, and DOES 1 to 25, were the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused damage to plaintiff:

At all times herein mentioned, plaintiff was, and is, the wife of Kenneth Presba. On November 21, 2020, defendants negligently caused injuries to Kenneth Presba. Plaintiff was present at the scene when the injury occurred and was aware that Kenneth Presba was injured in his fall. As a direct and proximate result of the negligent acts of defendants, and each of them, and as a result of the injuries and damages to Kenneth Presba, plaintiff, suffered serious emotional distress, including suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation and shame, and has thereby sustained damages in an amount to be determined at time of trial.

## THIRD CAUSE OF ACTION - Loss of Consortium

Plaintiff, Kris Presba alleges that All Named Defendants, and DOES 1 to 25, were the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused damage to plaintiff:

At all times herein mentioned, plaintiff was, and is, the wife of Kenneth Presba. On November 21, 2020, defendants negligently caused injuries to Kenneth Presba. As a direct and proximate result of the negligent acts of defendants, and each of them, and as a result of the injuries and damages to Kenneth Presba, plaintiff, has been deprived of the love, companionship, comfort, care, assistance, protection, affection, society, solace or moral support, loss of enjoyment of sexual relations, and loss of physical assistance in the operation and maintenance of the home, of her husband, Kenneth Presba, and has thereby sustained, and will continue to sustain damages, in an amount to be determined at time of trial.

EL DORADO CO. SUPERIOR CT.  
FILED APR 22 2022  
BY [Signature] Deputy

Assigned to  
Judge Dylan Sullivan  
For all purposes

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 5 of 5

(Add pages as required)

# **EXHIBIT B**

JOSHUA S. GOODMAN, ESQUIRE - State Bar #116576  
ZACHARY S. TOLSON, ESQUIRE - State Bar #242824  
GOODMAN NEUMAN HAMILTON LLP  
One Post Street, Suite 2100  
San Francisco, California 94104  
Telephone: (415) 705-0400  
Facsimile: (415) 705-0411

Attorneys for Defendant  
HOME DEPOT U.S.A., INC. (erroneously sued as THE HOME DEPOT U.S.A., INC.)

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

KENNETH PRESBA and KRIS  
PRESBA,

Plaintiff,

vs.

THE HOME DEPOT U.S.A., INC.;  
and DOES 1 to 25,

Defendants.

Case No. 22CV0687

**DEFENDANT HOME DEPOT U.S.A.,  
INC.'S ANSWER TO COMPLAINT**

Assigned for all purposes to Judge Dylan  
Sullivan

Action filed: April 22, 2022  
Trial date: none set

Defendant, in answer to the Unverified Complaint of Plaintiffs, denies each and every, all and singular, allegations of the Complaint, and denies that Plaintiffs have been injured or damaged in any of the sums mentioned in the Complaint, or in any sum, or at all, as the result of any act or omission of this answering Defendant.

**FIRST AFFIRMATIVE DEFENSE**

**Comparative Fault/Negligence of Plaintiff**

This answering Defendant alleges that Plaintiffs were themselves careless and negligent in and about the matters alleged in the Complaint, and that this carelessness and negligence on Plaintiffs' own part contributed as a proximate cause to the happening of the incident, the injuries, and loss and damage complained of, and any recovery by Plaintiffs should be reduced or eliminated based upon their comparative fault.

///

///

1 **SECOND AFFIRMATIVE DEFENSE**

2 **Comparative Fault/Negligence of Others**

3 As a separate and further affirmative defense, this answering Defendant alleges  
4 that the sole proximate cause of the injuries and damages, if any, allegedly suffered by  
5 the Plaintiffs were the negligence and fault of persons or entities other than this  
6 answering Defendant, for whose acts or omissions this answering Defendant is not  
7 legally or otherwise responsible.

8 **THIRD AFFIRMATIVE DEFENSE**

9 **Failure to State a Cause of Action**

10 As a separate and further affirmative defense, this answering Defendant alleges  
11 that the Complaint fails to state facts sufficient to constitute a cause of action against this  
12 answering Defendant.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 **Lack of Personal Jurisdiction**

15 As a separate and further affirmative defense, this answering Defendant alleges  
16 that as to each and every cause of action alleged in the Complaint, the Court lacks  
17 personal jurisdiction over Defendant.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 **Lack of Subject Matter Jurisdiction**

20 As a separate and further affirmative defense, this answering Defendant alleges  
21 that as to each and every cause of action alleged in the Complaint, the Court lacks subject  
22 matter jurisdiction over Defendant.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 **Lack of Capacity**

25 As a separate and further affirmative defense, this answering Defendant alleges  
26 that said Complaint contains a defect in the parties whereby Plaintiffs lack capacity to sue  
27 for those claims set forth therein.

28 ///

**SEVENTH AFFIRMATIVE DEFENSE**

**Misjoinder of Parties**

As a separate and further affirmative defense, this answering Defendant alleges that said Complaint arises from a misjoinder of named parties whereby Plaintiffs lack the capacity to sue for those claims set forth therein. Such misjoinder will result in prejudice to Defendant.

**EIGHTH AFFIRMATIVE DEFENSE**

**Failure to Join Necessary Parties**

As a separate and further affirmative defense, this answering Defendant alleges that said Plaintiffs failed to join necessary parties whereby in the interest of justice and fairness the action cannot proceed in the absence of the parties that should have been joined.

**NINTH AFFIRMATIVE DEFENSE**

**Real Parties in Interest**

As a separate and further affirmative defense, this answering Defendant alleges that Plaintiffs are not the real parties in interest, and lack standing to bring the claims set forth therein.

**TENTH AFFIRMATIVE DEFENSE**

**Failure to Mitigate Damages**

As a separate and further affirmative defense, this answering Defendant alleges that at all times and places mentioned in the Complaint, Plaintiffs failed to mitigate their damages. The damages claimed by Plaintiff could have been mitigated by due diligence on their part or by one acting under similar circumstances. Any recovery by Plaintiffs should be reduced or eliminated due to their failure to mitigate their damages.

**ELEVENTH AFFIRMATIVE DEFENSE**

**Spoliation of Evidence**

As a separate and further affirmative defense, this answering Defendant alleges that Plaintiffs, either intentionally or negligently, failed to preserve the primary evidence

1 relevant to this litigation, thus failing to afford this answering Defendant an opportunity  
2 to inspect such evidence, thereby severely prejudicing Defendant. Plaintiffs are therefore  
3 barred from introducing secondary or lesser evidence, and any recovery should be  
4 diminished accordingly.

5 **TWELFTH AFFIRMATIVE DEFENSE**

6 **Doctrine of Laches**

7 As a separate and further affirmative defense, this answering Defendant alleges  
8 that Plaintiffs have unreasonably delayed in bringing this action to the prejudice of  
9 Defendant and this action is therefore barred by reason of the doctrine of laches.

10 **THIRTEENTH AFFIRMATIVE DEFENSE**

11 **Assumption of Risk**

12 As a separate and further affirmative defense, this answering Defendant alleges  
13 that Plaintiffs had full knowledge of all the risks, dangerousness and hazards, if any there  
14 were, and nevertheless voluntarily and with full appreciation of the amount of danger  
15 involved in their actions and the magnitude of risk involved, assumed the risk of damages  
16 to themselves.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 **Causation**

19 As a separate and further affirmative defense, this answering Defendant alleges  
20 that its conduct was not the cause in fact or the proximate cause of any of the losses  
21 alleged by Plaintiffs.

22 **FIFTEENTH AFFIRMATIVE DEFENSE**

23 **No Notice of Dangerous Condition**

24 As a separate and further affirmative defense, this answering Defendant alleges  
25 that they had no notice, or inadequate notice, of any dangerous conditions that may or  
26 may not have existed at the time of the losses alleged by Plaintiffs, such that any  
27 preventative measures could have been taken.

28 ///

**SIXTEENTH AFFIRMATIVE DEFENSE**

**Statute of Limitations**

As a separate and further affirmative defense, this answering Defendant alleges that the Complaint of Plaintiffs are barred by the statute of limitations stated in Part 2, Title 2, Chapter 3, of the California Code of Civil Procedure, beginning with Section 335, and continuing through Section 349.4 and, more particularly, but not limited to, Sections 337, 337.1, 337.15, 337.5, 338, 339, 340 and/or 343.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**Workers' Compensation – Exclusive Remedy**

As a separate and further affirmative defense, this answering Defendant alleges that Plaintiffs were, at all relevant times, a special employee of Defendant and acting in the course and scope of that special employment, and that this action is therefore barred by the exclusive remedy provisions of the Workers' Compensation Act, as contained in California Labor Code sections 3600, 3601, and 3602.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**Reduction of Workers' Compensation Lien**

As a separate and further affirmative defense, this answering Defendant alleges that at all times material herein, the Plaintiffs were in the course and scope of their employment and that Plaintiffs and their employer were subject to the provisions of the Workers' Compensation Act of the State of California; that certain sums have been paid to or on behalf of Plaintiffs herein under the applicable provisions of the Labor Code of the State of California; that Plaintiffs' employer and Plaintiffs' co-employees were negligent and careless and that such negligence and carelessness proximately contributed to and caused the injuries of Plaintiffs, if any; and that under the doctrine of *Witt v. Jackson* such negligence and carelessness should reduce or eliminate any lien claim or claim in a Complaint-In-Intervention which may be made for reimbursement of Workers' Compensation benefits paid to or on behalf of Plaintiffs.

///



**NINETEENTH AFFIRMATIVE DEFENSE**

**Apportionment**

As a separate and further affirmative defense, this answering Defendant alleges that if they are found liable for any injury and damage to Plaintiffs, then said liability, if any, must be limited to this answering Defendant's proportionate share of fault, if any there be, pursuant to Code of Civil Procedure Section 1431.2.

**TWENTIETH AFFIRMATIVE DEFENSE**

**Alteration**

As a separate and further affirmative defense, this answering Defendant alleges that the subject products/services/work identified in the Complaint were misused, modified, altered and/or subjected to certain treatment by Plaintiffs and/or other unknown individuals or entities which substantially changed the performance, application characteristics, composition and formulation of the subject products after they left this answering Defendant's custody and control.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**Compliance with Standards**

As a separate and further affirmative defense, this answering Defendant alleges that the methods and procedures they employed in manufacturing, assembling, packaging, distributing, supplying and selling the products and/or services complied with all industry standards, federal, state and local regulations, and applicable states of the art in the industry, at all times mentioned herein.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**Reservation of Rights**

As a separate and further affirmative defense, this answering Defendant alleges that Defendant presently has insufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, defenses available. Defendant reserves herein the right to assert additional defenses in the event discovery indicates that they would be appropriate.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

**Estoppel**

As a separate and further affirmative defense, this answering Defendant alleges that Plaintiffs have waived and/or are estopped from alleging the matters set forth in the Complaint.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

**Discharge of Duties**

As a separate and further affirmative defense, this answering Defendant alleges that, prior to the commencement of this action, this answering Defendant duly performed, satisfied and discharged all of its duties and obligations arising out of any and all agreements, representations or contracts made by them.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

**Trivial Defect**

As a separate and further affirmative defense, this answering Defendant alleges that the claims asserted in the Complaint are barred by the trivial defect doctrine.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

**Statute of Frauds**

As a separate and further affirmative defense, this answering Defendant alleges that the Complaint and each of cause of action thereof, is barred by the Statute of Frauds.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

**Waiver**

As a separate and further affirmative defense, this answering Defendant alleges that the Complaint and each of cause of action thereof, is barred by Waiver.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

**Products Liability - Unforeseeable Use**

As a separate and further affirmative defense, this answering Defendant alleges that if Plaintiffs sustained injuries attributable to the use of any product of this Defendant, which allegations are expressly denied, the injuries were caused in whole or in part by the

1 unreasonable, unforeseeable and inappropriate purpose and/or improper use which was  
2 made of the product.

3 **TWENTY-NINETH AFFIRMATIVE DEFENSE**

4 **Compliance with Standards**

5 As a separate and further affirmative defense, these answering Defendants allege  
6 that the methods and procedures employed in manufacturing, assembling, packaging,  
7 distributing, supplying and selling the products and/or services complied with all industry  
8 standards, federal, state and local regulations, and applicable states of the art in the  
9 industry, at all times mentioned herein.

10 **THIRTIETH AFFIRMATIVE DEFENSE**

11 **Products Liability - Misuse and Abuse**

12 As a separate and further affirmative defense, this answering Defendant alleges that  
13 the damages complained of in the Complaint were caused in whole or in part by the  
14 misuse and abuse of the product.

15 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

16 **Warranty – Failure to State Cause of Action**

17 As a separate and further affirmative defense, this answering Defendant alleges that  
18 the Complaint and each cause of action thereof, fails to state a cause of action in that  
19 Plaintiffs failed to give timely and proper notice of breach of warranty.

20 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

21 **Products Liability – Modification, Alteration, and Change**

22 As a separate and further affirmative defense, this answering Defendant alleges that  
23 the injuries and damages sustained by Plaintiffs, if any, were solely and legally caused by  
24 the modification, alteration or change of the product referred to in the Complaint and said  
25 modification, alteration or change was performed by persons or entities other than this  
26 answering Defendant and without Defendant's knowledge or consent.

27 ///

28 ///

1 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

2 **Unclean Hands**

3 As a separate and further affirmative defense, this answering Defendant alleges  
4 that Plaintiffs are barred from recovery by reason of his unclean hands.

5 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

6 **Debt Offset**

7 As a separate and further affirmative defense, this answering Defendant alleges  
8 that Plaintiffs' alleged debt should be offset against monies owed by the Plaintiffs to this  
9 answering Defendant.

10 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

11 **Proposition 51**

12 As a separate and further affirmative defense, this answering Defendant alleges  
13 that if this answering Defendant is found liable for any injury and damage to Plaintiffs,  
14 then said liability for non-economic damages to Plaintiff must be limited to this  
15 answering Defendant's proportionate share of fault, if any there be, as defined by Cal.  
16 Civil Code Section 1431.2, et seq.

17 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

18 **Res Judicata**

19 As a separate and further affirmative defense, this answering Defendant alleges  
20 that Plaintiffs' Complaint, and each cause of action thereof, is barred by the doctrine of  
21 Res Judicata.

22 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

23 **Collateral Estoppel**

24 As a separate and further affirmative defense, this answering Defendant alleges  
25 that Plaintiffs' Complaint, and each cause of action thereof, is barred by the doctrine of  
26 Collateral Estoppel.

27 ///

28 ///

WHEREFORE, Defendant prays:

1. Plaintiffs takes nothing against it by their Complaint;
2. Defendant has judgment for its costs of suit; and
3. Such other and further relief as the court deems just and proper.

DATED: July 14, 2022

GOODMAN NEUMAN HAMILTON LLP

By: 

JOSHUA S. GOODMAN  
ZACHARY S. TOLSON  
Attorneys for Defendant  
HOME DEPOT U.S.A., INC.  
(erroneously sued as THE HOME  
DEPOT U.S.A., INC.)

**PROOF OF SERVICE**

**CASE NAME:** *Kenneth Presba and Kris Presba vs. The Home Depot U.S.A., Inc.*

**CASE NUMBER:** 22CV0687

**DATE OF SERVICE:** July 14, 2022

**DESCRIPTION OF DOCUMENTS SERVED:**

**DEFENDANT HOME DEPOT U.S.A., INC.'S ANSWER TO COMPLAINT**

**SERVED ON THE FOLLOWING:**

William A. Deitchman  
DEITCHMAN & DEITCHMAN  
6201 Enterprise Drive, Suite E  
Diamond Springs, CA 95619  
will@deitchmanlaw.com  
*Attorneys for Plaintiff*

I am over the age of 18 years and not a party to or interested in the above-named case. I am an employee of Goodman Neuman Hamilton LLP, and my business address is One Post Street, Suite 2100, San Francisco, CA 94104. On the date stated above, I served a true copy of the document(s) described above, by:

ELECTRONIC TRANSMISSION ONLY. Only by electronic submission of the document(s) to the person(s) at the email address(es) listed, pursuant to the parties' agreement to electronic service in this action and Code of Civil Procedure sections 1010.6(a)(4) and (5) and 1010.6(e). Prior to the service hereof, the appropriate electronic service address for counsel being served was confirmed by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on the date stated above.

  
\_\_\_\_\_  
Jeffrey Trayner

# **EXHIBIT C**

CIV-050

**- DO NOT FILE WITH THE COURT-****-UNLESS YOU ARE APPLYING FOR A DEFAULT JUDGMENT UNDER CODE OF CIVIL PROCEDURE § 585 -**

|  |  |                |  |
|--|--|----------------|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):<br>William A. Deitchman, Esq. (SBN 249267)<br>DEITCHMAN & DEITCHMAN<br>6201 Enterprise Drive, Suite E<br>Diamond Springs, CA 95619<br>ATTORNEY FOR (name): Plaintiffs, Kenneth Presba and Kris Presba |  | TELEPHONE NO.: | FOR COURT USE ONLY<br><br><br><br><br><br><br><br><br><br>CASE NUMBER: |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF El Dorado<br>STREET ADDRESS: 3321 Cameron Park Drive<br>MAILING ADDRESS:<br>CITY AND ZIP CODE: Cameron Park, CA 95682<br>BRANCH NAME:  |  |                |  |
| PLAINTIFF: Kenneth Presba and Kris Presba<br>DEFENDANT: The Home Depot, and Does 1 to 50   |  |                |  |
| STATEMENT OF DAMAGES<br>(Personal Injury or Wrongful Death)  |  |                |  |

To (name of one defendant only): The Home Depot  
 Plaintiff (name of one plaintiff only): Kenneth Presba  
 seeks damages in the above-entitled action, as follows:

**1. General damages**

- |   | AMOUNT     |
|---|------------|
| a. <input checked="" type="checkbox"/> Pain, suffering, and inconvenience .....                   | \$ 150,000 |
| b. <input checked="" type="checkbox"/> Emotional distress .....                                   | \$ 50,000  |
| c. <input type="checkbox"/> Loss of consortium .....  | \$         |
| d. <input type="checkbox"/> Loss of society and companionship (wrongful death actions only) ..... | \$         |
| e. <input type="checkbox"/> Other (specify) .....   | \$         |
| f. <input type="checkbox"/> Other (specify) .....   | \$         |
| g. <input type="checkbox"/> Continued on Attachment 1.g.  |            |

**2. Special damages**

- |  |           |
|--|-----------|
| a. <input checked="" type="checkbox"/> Medical expenses (to date) .....  | \$ 25,000 |
| b. <input checked="" type="checkbox"/> Future medical expenses (present value) .....                           | \$ 25,000 |
| c. <input type="checkbox"/> Loss of earnings (to date) .....   | \$        |
| d. <input type="checkbox"/> Loss of future earning capacity (present value) .....                              | \$        |
| e. <input type="checkbox"/> Property damage .....  | \$        |
| f. <input type="checkbox"/> Funeral expenses (wrongful death actions only) .....                               | \$        |
| g. <input type="checkbox"/> Future contributions (present value) (wrongful death actions only) .....           | \$        |
| h. <input type="checkbox"/> Value of personal service, advice, or training (wrongful death actions only) ..... | \$        |
| i. <input type="checkbox"/> Other (specify) .....  | \$        |
| j. <input type="checkbox"/> Other (specify) .....  | \$        |
| k. <input type="checkbox"/> Continued on Attachment 2.k.   |           |

3. ☐ **Punitive damages:** Plaintiff reserves the right to seek punitive damages in the amount of (specify).. \$ \_\_\_\_\_  
 when pursuing a judgment in the suit filed against you.

Date: June 13, 2022

William A. Deitchman, Esq.

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

(Proof of service on reverse)

Page 1 of 2